

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

RUSSELL ALAN LATONA,

Plaintiff,

v.

OFFICER MATTHEW POLLACK, et al.,

Defendants.

Civil Action No. 07-1 Erie

MEMORANDUM ORDER

This civil rights action was received by the Clerk of Court on January 3, 2007, and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation [Doc. No. 18], filed on November 8, 2007, recommended that Defendants' motion to dismiss [Doc. No. 6] be granted in part and denied in part as follows: denied as to the argument regarding Plaintiff's failure to exhaust under the Prison Litigation Reform Act; granted as to the dismissal of Defendants Erie County Prison and Warden Veshecco; denied as to qualified immunity on the Eighth Amendment claim involving medical treatment; granted as to qualified immunity on the Eighth Amendment claims other than those involving medical treatment; and granted as to qualified immunity on the Fifth Amendment claims. The parties were allowed ten (10) days from the date of service to file objections. Service was made on Plaintiff by certified mail and on Defendants. No objections were filed. After de novo review of the motion and documents in the case, together with the Report and Recommendation, the following order is entered:

AND NOW, this 29th day of November, 2007;

IT IS HEREBY ORDERED that the Defendants' motion to dismiss [Doc. No. 6] is GRANTED in part and DENIED in part as follows: the motion is DENIED as to the argument regarding Plaintiff's failure to exhaust under the Prison Litigation Reform Act; GRANTED as to the dismissal of Defendants Erie County Prison and Warden

Veshecco; DENIED as to qualified immunity on the Eighth Amendment claim involving medical treatment; GRANTED as to qualified immunity on the Eighth Amendment claims other than those involving medical treatment; and GRANTED as to qualified immunity on the Fifth Amendment claims. The Clerk is directed to terminate Defendants Erie County Prison and Warden Veshecco from this action.

The Report and Recommendation [Doc. No. 18] of Magistrate Judge Baxter, filed on November 8, 2007, is adopted as the opinion of the Court.

s/ Sean J. McLaughlin
United States District Judge

cm: All parties of record
Susan Paradise Baxter, U.S. Magistrate Judge